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S.B. CIVIL MISC. APPEAL NO.992/2007.
Smt. Manki & Ors. Vs. Ramesh Chandra & Ors.

Date of Order :: 27th February 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manish Pitaliya, for the appellants.

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BY THE COURT:

For awarding compensation to the mother, wife and 5 minor children of the vehicular accident victim Narain Lal, the Tribunal has noticed the assertion of the claimants about the age of deceased at 35 years but has found the same to be at 42 years with reference to the certificate (Ex.14) produced by the claimants on record stating the date of birth of deceased as per official record of his employer as 20.05.1960; the date of accident being 06.09.2002. The Tribunal has also noticed that the age of the deceased was stated at 45 years in the postmortem report (Ex.3) and has taken the deceased in the age group of 40-45 years. In relation to the income of the deceased, the Tribunal has again referred to the certificate (Ex.14) issued by the Commandant of Mewar Bheel Core, Kherwara and has found that the victim was a Sepoy getting Rs.9,095/- per month and on that basis, has taken his average income at Rs.9,000/- per month; and after deducting

one-third on his personal expenditure and with application of multiplier of 15, has assessed pecuniary loss for the claimants at Rs.10,80,000/-; and further allowing Rs.35,000/- towards non-pecuniary loss and Rs.2,000/- towards funeral expenses has made the award of compensation in the sum of Rs.11,17,000/- in favour of the claimants and has also awarded interest @ 6% per annum from the date of filing of the claim application. In this appeal, the award is sought to be questioned by the claimants as being low and inadequate.

Learned counsel Mr. Manish Pitaliya arguing for the appellants seeking enhancement over the amount of compensation so awarded by the Tribunal has strenuously contended that: (i) the deceased having seven dependents, the Tribunal has been in error in deducting one-third from his estimated income; and (ii) even the estimated income by the Tribunal has been on the lower side for the deceased being in a stable job and in younger age, reasonable component towards future prospects ought to have been provided. Learned counsel has referred to a Division Bench decision of this Court in Kalli @ Kalyani (Smt.) & Ors. Vs. Indra Raj Bairwa & Ors.: 2005 RAR 191. The submissions are absolutely bereft of substance in the context of this case.

It is noticed in the first place that the claimants had not been forthright in their submissions before the

Tribunal and attempted to mis-state a relevant fact about the age of the deceased. It is noticed that the deceased was 42 years of age but the claimants deliberately stated the age of the deceased only at 35 years, obviously in order to claim excessive compensation. The conduct of the claimant-appellants does not inspire confidence.

It is noticed from the photostat of the certificate (Ex.14), placed for perusal by the learned counsel during the course of submissions, that the basic salary of the deceased has been shown at Rs.5,500/-, DA at Rs.2,365/- and Special Pay at Rs.40/- but then are included the components of Rs.655/- towards hard duty allowance, Rs.35/- towards uniform allowance and Rs.500/- towards mess allowance. Such components of allowance could not have been taken into consideration towards the net income of the deceased for the purpose of loss of contribution for the claimants; and then the said certificate is absolutely silent about the relevant deductions from such salary. The Tribunal has obviously over-looked these aspects and instead of taking reasonable figure towards net carry-home income, as taken Rs. 9,000/- as average monthly income of the deceased. This assessment is itself substantially on the higher side. When proper assessment is made after removing out the components of personal allowances related only with posting of the deceased

and so also of the minimum basic deductions, the net carry-home income, for the purpose for considering loss for the claimants, shall be much lesser than Rs. 9,000/- per month. Thereafter, even when a reasonable component of enhancement towards future prospects is provided for the deceased being in settled job but keeping in view his age at 42 years; and even when lesser deduction is made on his personal expenditure, say at 25%, in view of larger number of dependants, this court is of opinion that the multiplicand towards average loss of contribution cannot stand beyond Rs. 72.000/- per annum as taken by the Tribunal. In this view of the matter, the submission as made by the learned counsel with reference to the decision of this court in Kalli's case (supra) carry no substance. Then, the Tribunal has proceeded to apply maximum side multiplier of 15 though in view of higher multiplicand and in the overall circumstances of the case it could have been lower than 15.

In the ultimate analysis, this Court is satisfied that the award of compensation as made by the Tribunal in this case at Rs.11,17,000/- rules out any scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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